

House Engrossed

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

# HOUSE BILL 2708

AN ACT

AMENDING SECTIONS 40-360.21 AND 40-360.22, ARIZONA REVISED STATUTES; RELATING  
TO UNDERGROUND FACILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 40-360.21, Arizona Revised Statutes, is amended to  
3 read:

4 40-360.21. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Abandoned" means no longer in service and physically disconnected  
7 from a portion of the facility, or from any other facility, that is in use or  
8 still carries service.

9 2. "Building official" means the AGENCY OR officer employed by a  
10 political subdivision of this state and charged with the administration and  
11 enforcement of a building code to regulate the quality, type of material and  
12 workmanship of construction of buildings or structures.

13 3. "Careful and prudent manner" means conducting excavation in such a  
14 way that when it is within twenty-four inches of the underground facility  
15 located and marked by the underground facilities operator, by stakes, paint  
16 or in some customary manner, the exact location is manually determined, and  
17 the uncovered facility is supported and protected.

18 4. "Cross culverts or similar roadway drainage facilities" means  
19 transverse drainage structures with both ends or openings visible ~~and~~  
20 ~~includes~~ INCLUDING box culverts, drainage pipes or other covered structures.

21 5. "Detectible underground location device" means any device that is  
22 installed underground and that is capable of being detected from above ground  
23 with an electronic locating device.

24 6. "Excavation" means any operation in which earth, rock or other  
25 material in the ground is moved, removed or otherwise displaced by means or  
26 use of any tools, equipment or explosives and includes, without limitation,  
27 grading, trenching, digging, ditching, drilling, augering, boring,  
28 tunnelling, scraping, cable or pipe plowing and driving.

29 7. "Implied easement" means any easement or right-of-way on private  
30 property required to provide utility services by means of underground  
31 facilities in property of the owner requesting such service.

32 8. "Inactive" means:

33 (a) That portion of an underground facility that is not in use but is  
34 still connected to the facility, or to any other facility, that is in use or  
35 still carries service.

36 (b) A new underground facility that has not been connected to any  
37 portion of an existing facility.

38 9. "Installation records of an underground facility" means maps,  
39 drawings, diagrams, surveys, schematics, illustrations, sketches or any other  
40 depictions or descriptions of an underground facility that reflect the  
41 location at the time of installation of the underground facility and any  
42 surface extensions in a reasonably accurate manner.

1       10. "HOMEOWNERS' ASSOCIATION" HAS THE SAME MEANING AS IN SECTION  
2 33-2011.

3       ~~10-~~ 11. "Locator strip" means a type of detectible underground  
4 location device that consists of a plastic or other durable material ribbon  
5 containing a material capable of being detected from above ground with an  
6 electronic locating device and color coded by type of underground facility.

7       ~~11-~~ 12. "Locator wire" means a type of detectible underground location  
8 device that consists of a copper wire or metallic, conductive, noncorrosive  
9 trace wire capable of being detected from above ground with an electronic  
10 locating device.

11       ~~12-~~ 13. "One-call notification center" means an organization of owners  
12 or operators of underground facilities that provides a telephone number  
13 notification service for the purpose of receiving and distributing to its  
14 members advance notifications from persons regarding planned excavations.

15       ~~13-~~ 14. "Person" means any individual, firm, joint venture,  
16 partnership, corporation, association, HOMEOWNERS' ASSOCIATION, municipality,  
17 governmental unit, department or agency and shall include any trustee,  
18 receiver, assignee or personal representative thereof.

19       ~~14-~~ 15. "Routine road maintenance grading" means the routine grading  
20 or resurfacing of the concrete, asphaltic or composite surface but not the  
21 subbase of a roadway by the state or a political subdivision of the state for  
22 the purpose of maintaining the surface condition of the road and includes  
23 recovery of material from a borrow ditch.

24       ~~15-~~ 16. "Stakes, paint or in some customary manner" means marking the  
25 location of an underground facility by the colors established by the  
26 commission. These colors shall be restricted to the underground facility  
27 location.

28       ~~16-~~ 17. "Underground facilities operator" means a public utility,  
29 municipal corporation or other person having the right to bury underground  
30 facilities in any public street, alley, right-of-way dedicated to the public  
31 use or utility easement or pursuant to any express or implied private  
32 property easement. Underground facilities operator does not include a  
33 homeowner OR HOMEOWNERS' ASSOCIATION that owns a sewer facility in a public  
34 street, alley, right-of-way dedicated to public use or utility easement.

35       ~~17-~~ 18. "Underground facility" means any item of personal property  
36 that is buried or placed below ground for use in connection with the storage  
37 or conveyance of water, sewage, electronic, telephonic, or telegraphic  
38 communications, electric energy, oil, gas or other substances, and shall  
39 include but not be limited to pipes, sewers, conduits, cables, valves, lines,  
40 wires, manholes, attachments and those portions of poles and their  
41 attachments below ground except cross culverts or similar roadway drainage  
42 facilities and landscape irrigation systems of two inches in diameter or  
43 less.

1           Sec. 2. Section 40-360.22, Arizona Revised Statutes, is amended to  
2 read:

3           40-360.22. Excavations; determining location of underground  
4                   facilities; providing information; excavator  
5                   marking; on-site representative; validity period  
6                   of markings; liability for misuse of locate  
7                   requests; detectible underground locating devices;  
8                   civil penalty

9           A. A person shall not make or begin any excavation in any public  
10 street, alley, right-of-way dedicated to the public use or utility easement,  
11 ~~OR~~ in any express or implied private property utility easement,~~—~~ without  
12 first determining whether underground facilities will be encountered, and if  
13 so where they are located from each and every underground facilities operator  
14 and taking measures for control of the facilities in a careful and prudent  
15 manner.

16           B. Every underground facilities operator shall file with the  
17 corporation commission the job title, address and telephone number of the  
18 person or persons from whom the necessary information may be obtained. Such  
19 person or persons shall be readily available during established business  
20 hours. The information on file shall also include the name, address and  
21 telephone number of each one-call notification center to which the  
22 underground facilities operator belongs. Upon receipt of inquiry or notice  
23 from the excavator, the underground facilities operator shall respond as  
24 promptly as practical, but in no event later than two working days, by  
25 ~~CAREFULLY~~ marking such facility with stakes, paint or in some customary  
26 manner. No person shall begin excavating before the location and marking are  
27 complete or the excavator is notified that marking is unnecessary. If the  
28 excavator consents, an underground facilities operator may notify the  
29 one-call notification center that marking is unnecessary pursuant to a method  
30 established by the one-call notification center. An underground facilities  
31 operator may ~~delegate~~ ASSIGN any marking or notification obligations required  
32 by this subsection to an agent or servant of the underground facilities  
33 operator. An underground facilities operator may notify the excavator that  
34 marking is unnecessary pursuant to any mutually agreeable method.

35           C. On a timely request by the underground facilities operator, the  
36 excavator shall mark the boundaries of the location requested to be excavated  
37 in accordance with a color code designated by the commission or by applicable  
38 custom or standard in the industry. A request under this subsection for  
39 excavator marking does not alter any other requirement of this section.

40           D. Except as otherwise provided in this section, in performing the  
41 marking required by subsection B of this section, the underground facilities  
42 operator of an underground facility installed after December 31, 1988 in a  
43 public street, alley or right-of-way dedicated to public use, but not  
44 including any express or implied private property utility easement, shall

1 locate the facility by referring to installation records of the facility and  
2 utilizing one of the following methods:

- 3 1. Vertical line or facility markers.
- 4 2. Locator strip or locator wire.
- 5 3. Signs or permanent markers.
- 6 4. Electronic or magnetic location or tracing techniques.
- 7 5. Electronic or magnetic sensors or markers.
- 8 6. Metal sensors or sensing techniques.
- 9 7. Sonar techniques.
- 10 8. Underground electrical or radio transmitters.
- 11 9. Manual location techniques, including pot-holing.
- 12 10. Surface extensions of underground facilities.
- 13 11. Any other surface or subsurface location technique that is at least

14 as accurate as the other marking methods in this subsection and that is not  
15 prohibited by the commission or by federal or state law.

16 E. Except as otherwise provided in this section, for an underground  
17 facility other than one installed after December 31, 1988, in a public  
18 street, alley or right-of-way dedicated to public use, in performing the  
19 marking required by subsection B of this section, the underground facilities  
20 operator may refer to installation or other records relating to the facility  
21 to assist in locating the facility and shall locate the facility utilizing  
22 one of the methods listed under subsection D of this section.

23 F. If an underground facilities operator is unable to complete the  
24 location and marking within the time period provided by subsection B of this  
25 section, the facilities operator shall satisfy the requirements of this  
26 section by providing prompt notice of these facts to the excavator and  
27 assigning one or more representatives to be present on the excavation site at  
28 all pertinent times as requested by the excavator to provide facility  
29 location services until the facilities have been located and marked. The  
30 underground facilities operator shall bear all of its own costs associated  
31 with assigning representatives. If representatives are assigned under this  
32 subsection, the excavator is not responsible or liable for damage to or  
33 repair of the underground facilities operator's underground facility while  
34 acting under the direction of an assigned representative of the underground  
35 facilities operator, unless the damage or need for repair was caused by the  
36 excavator's negligence.

37 G. The marking required by subsection B of this section is valid for  
38 fifteen days from the date of the marking, excluding Saturdays, Sundays and  
39 other legal holidays. If the excavation will continue past the validity  
40 period of the marks as provided by this subsection, the excavator shall  
41 notify the underground facilities operator or an organization designated by  
42 the underground facilities operator at least two days, excluding Saturdays,  
43 Sundays and other legal holidays, before the end of the validity period. All  
44 requests for facility markings and requests to extend the validity period of  
45 the markings shall be for the purpose of excavating within the validity

1 period of the markings. An excavator that requests facility markings shall  
2 limit the request to an area that can reasonably be excavated within the  
3 validity period of the markings. A person who violates this subsection is  
4 liable to the one-call notification center and to all affected underground  
5 facilities operators for any resulting damages, costs and expenses.

6 H. Nothing in this section shall be construed to prevent an excavator  
7 and an underground facilities operator from holding a preconstruction  
8 conference regarding marking ~~and location of~~ underground facilities and  
9 entering into a mutually agreeable written schedule or written arrangement  
10 for satisfying the requirements of this section, except that this subsection  
11 does not eliminate the excavator's obligation to notify the underground  
12 facilities operator to ~~locate and~~ mark excavation sites under subsection B of  
13 this section based on the actual construction schedule.

14 I. For abandoned and apparently abandoned underground facilities:

15 1. The underground facilities operator shall notify the excavator  
16 whether the facility is active or abandoned. An inactive facility shall be  
17 considered active for purposes of this subsection. This section does not  
18 obligate any person to represent that an underground sewer facility in any  
19 public street, alley, right-of-way dedicated to public use or utility  
20 easement is abandoned if it was installed on or before December 31, 2005 and  
21 it is not owned by an underground facilities operator of a sewer system.

22 2. For an underground facility abandoned after December 31, 1988 or  
23 covered by installation records prepared under section 40-360.30, subsection  
24 A, the underground facilities operator may not advise or represent to the  
25 excavator that a facility or portion of a facility is abandoned unless the  
26 underground facilities operator has verified, by reference to installation  
27 records or by testing, that the facility or portion is actually abandoned and  
28 not merely inactive. For all other abandoned or apparently abandoned  
29 underground facilities, each one-call notification center shall establish a  
30 method of providing personnel from an underground facilities operator  
31 qualified to safely inspect and verify that the facility is abandoned or  
32 active and a method for reimbursing the verifying underground facilities  
33 operator for the costs incurred. The reimbursement method may not include  
34 any charge or expense to the excavator. For the purposes of this article, an  
35 underground facilities operator shall not represent that an underground  
36 facility is abandoned unless the facility has been verified as abandoned  
37 pursuant to this subsection.

38 3. For the purposes of this article, if an excavator encounters an  
39 apparently abandoned underground facility, the excavator shall not treat the  
40 underground facility as abandoned until the excavator has received  
41 notification that the underground facility is abandoned pursuant to paragraph  
42 1 of this subsection or has notified the underground ~~facility~~ FACILITIES  
43 operator of the apparent abandonment and has received verification of  
44 abandonment pursuant to paragraph 2 of this subsection.

1 J. All new and active underground facilities installed in any real  
2 property after December 31, 2005 shall be installed with a detectible  
3 underground location device unless the facility is capable of being detected  
4 from above ground with an electronic locating device. A person who violates  
5 this subsection is subject to a civil penalty in an amount not to exceed five  
6 thousand dollars. The building official shall administer and enforce this  
7 subsection for all underground facilities except those that are installed for  
8 a public utility or municipal corporation. Any penalties received by the  
9 building official shall be deposited in the municipality's or political  
10 subdivision's general fund, as applicable. EXCEPT AS REQUIRED BY A CITY,  
11 TOWN OR COUNTY BUILDING CODE OR OTHER RELATED CODE, FOR PURPOSES OF LOCATING  
12 AN UNDERGROUND FACILITY NO BUILDING OFFICIAL OR POLITICAL SUBDIVISION MAY  
13 COMPEL THE INSTALLATION OF ONE OR MORE CLEAN-OUTS ON ANY UNDERGROUND SEWER  
14 FACILITY THAT IS OWNED BY ANOTHER PERSON AND SERVES ONE CUSTOMER WHERE ANY  
15 PORTION OF THE UNDERGROUND SEWER FACILITY IS IN ANY PUBLIC STREET, ALLEY,  
16 RIGHT-OF-WAY DEDICATED TO PUBLIC USE, PRIVATE PROPERTY OR EASEMENT.

17 K. Nothing in this section shall be construed as prohibiting the use  
18 of warning tape, warning markers or any other warning device by the  
19 underground facilities operator.

20 L. For every underground facilities operator of a sewer system:

21 1. For the purposes of this article, an underground facilities  
22 operator of a sewer system is responsible for locating and marking the  
23 underground sewer facilities owned by another person pursuant to subsection B  
24 of this section if those underground facilities are installed after December  
25 31, 2005 and are in any public street, alley, right-of-way dedicated to  
26 public use or utility easement.

27 2. In performing the marking required by this subsection, the  
28 underground facilities operator of the sewer system shall locate the facility  
29 by referring to installation records of the facility and by using one of the  
30 methods listed in subsection D of this section. FOR AN UNDERGROUND FACILITY  
31 INSTALLED BEFORE JANUARY 1, 2006, THE UNDERGROUND FACILITIES OPERATOR OF THE  
32 SEWER SYSTEM MAY REFER TO INSTALLATION RECORDS OR OTHER RECORDS RELATING TO  
33 THE FACILITY TO ASSIST IN LOCATING THE FACILITY.

34 3. This subsection does not obligate an underground facilities  
35 operator of a sewer system to locate and mark the underground sewer  
36 facilities owned by another person if the customer receiving sewer service  
37 from the underground sewer facility refuses to grant permission to the  
38 underground facilities operator of a sewer system to access the real property  
39 for the purpose of ascertaining the location of the underground sewer  
40 facility in any public street, alley, right-of-way dedicated to public use or  
41 easement.

42 4. This subsection does not obligate an underground facilities  
43 operator of a sewer system to maintain, clean or unstop underground sewer  
44 facilities owned by another person.